

EXHIBIT 3

PART II

1 one that is used by the majority of advertising
2 agencies, and it is very well respected and
3 accredited, and I can't get into all of their actual
4 minutiae of how they conduct those.

5 Q. But you rely on what they -- the information
6 they give to you?

7 A. Absolutely.

8 Q. Are you familiar with the product Zoladex?

9 A. I'm not.

10 Q. Do you have any idea what it's used for?

11 A. I did, but I'd have to look it up. There
12 were quite a few drugs, 17 drugs as I recall. I'd
13 have to go look at it again.

14 Q. If you look at your declaration, one of the
15 attachments to it, I think, has the list of drugs.
16 If you could find that, that would be helpful.

17 A. Yes, it would be helpful to me, too. Yes.

18 Q. Do you have anything on Zoladex there?

19 A. Yes, I do. Exhibit Kinsella 002.

20 Q. And Zoladex is a drug manufactured by my
21 client, AstraZeneca; is that right?

22 A. Yes, that's correct.

1 Q. Did you do anything or did your firm do
2 anything to research the user profile and
3 demographic of Zoladex users?

4 A. I did not.

5 Q. You did not look at any particular materials
6 as to whom that drug is prescribed?

7 A. I didn't -- I did not look at the
8 demographics through MRI. There was only one of the
9 17 drugs that was measured by MRI.

10 Q. Okay. So you didn't go outside and do any
11 research to figure out the typical age, gender,
12 geographic location, any other demographic for
13 Zoladex users?

14 A. The research was done by my staff that
15 indicated that the treatment was for prostate,
16 breast cancer and endometriosis, and what that tells
17 me is that you have a breadth of potential age
18 demographics here, you have two gender demographics
19 here, that these are not necessarily drugs that
20 affect a particular income level, particular
21 household income level, et cetera.

22 And so first of all, I didn't have it

1 available in MRI, but I did look at each of these.
2 I don't remember much about them today, but I did
3 look at these. I knew a lot of them were cancer
4 drugs, et cetera, which is why we ended up
5 looking -- because I was not able to measure against
6 individual drugs, that's why I chose the Medicare
7 Part B.

8 Q. Your testimony is that there's no sources
9 available to identify specific target audiences for
10 particular drugs?

11 A. No, I'm not saying that, but I need to be
12 able to have a measurable target available to me to
13 be able to opine to the court that I'm reaching that
14 target.

15 Q. And you can't -- sitting here today, you
16 can't tell me what the target audience is in terms
17 of age or gender for members of Class 1 who were
18 prescribed Zoladex; is that right?

19 A. Based on some of the other work that I've
20 done previously and what I have read in some of the
21 work that I did in a number of the cases, I know
22 that breast cancer and prostate cancer are likely to

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 58

1 (Exhibit Kinsella 005 marked for
2 identification)

3 Q. Are you familiar with that e-mail and the
4 attached drug list?

5 A. I haven't reviewed it recently, but it goes
6 back to February 14th. This is from Tim McHugh.

7 Q. And that exhibit lists the various drugs and
8 it actually has a column called "User Profile," do
9 you see that?

10 A. Yes, I do.

11 Q. And do you see for Zoladex it says the user
12 profile is women?

13 A. Right.

14 Q. Do you believe that to be true?

15 A. No.

16 Q. You don't believe that to be true?

17 A. No. This is work product that was done in
18 February.

19 Q. Okay. And is there anything that you recall
20 will give you more updated information on the user
21 profile for Zoladex?

22 A. The ones that we attached to our documents,

1 our -- the one I just looked at, Exhibit Kinsella
2 002, was certainly an updated -- this was the very
3 first iteration that was done by my office.

4 Q. Well, what I'm trying to distinguish is, the
5 indications on the e-mail I just showed you for
6 Zoladex are the same indications that you mentioned
7 that are attached to your final affidavit, namely
8 breast cancer, prostate cancer, and endometriosis.
9 Those haven't changed.

10 A. No, they haven't.

11 Q. But the user profile listed on this document
12 for Zoladex is women, and my question to you is,
13 what is the basis for that conclusion, that the user
14 profile for Zoladex is women?

15 A. This was not my conclusion. This was a
16 document prepared by a staff member, and as you --
17 it was updated with more information. This is one
18 of the first cuts that we did on any work for this.
19 This is not a final document and was not necessarily
20 one upon which I relied.

21 Q. But you don't have a basis to tell me, as
22 you testified before, whether it's true or not that

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 60

1 the user profile for Zoladex is women as opposed to
2 men?

3 A. I don't.

4 Q. And that is not important to your notice
5 program in this case, is that what you testified?

6 A. Let me take my answer back. Just that I --
7 if you're saying that I can't tell you whether women
8 take Zoladex more than men take Zoladex, I can't
9 tell you that, but I can tell you that I know that
10 men have prostate cancer and women have breast
11 cancer. That I do know.

12 Q. But you have no basis and you've done no
13 research to quantify the percentages of uses of
14 Zoladex as between men and women?

15 MR. NOTARGIACOMO: Objection, asked and
16 answered. Go ahead.

17 A. I have to reach both of them. It doesn't
18 matter to me.

19 Q. If you can just answer my question.

20 A. Okay.

21 Q. You have done no research to determine the
22 relative proportions over this class period of

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 61

1 whether members of Class 1 who took Zoladex are
2 predominantly men or predominantly women?

3 A. I have not done that research, and it's not
4 material because I have to reach them both.

5 Q. Just so we're clear, for none of the drugs
6 of any of the defendants in this case have you
7 undertaken any research to determine the specific
8 demographic targets for particular drugs?

9 A. That's correct.

10 Q. Are you aware that this case against my
11 client, AstraZeneca, is being tried as a separate
12 trial against AstraZeneca?

13 A. Yes, I'm aware of that.

14 Q. Are you of the view that what happens at the
15 trial of another defendant, B-MS or J&J, has any
16 impact on what happens to the class against my
17 client?

18 A. In terms of the notice, I'm charged with
19 giving effective notice to the class members. I'm
20 assuming that there will be class members who are
21 taking different kinds of drugs. One class member
22 can be taking more of one of these drugs and have

1 A. It's a chart that looks at the Medicare --
2 demographics of Medicare recipients and also the
3 branded/generic drug users, and it looks at it by
4 various categories of gender, age, education,
5 household income, ethnicity and location.

6 Q. Okay. And for gender, your research has
7 indicated that 57.2 percent of Medicare recipients
8 are female as opposed to male; is that right?

9 A. That's correct.

10 Q. And that 59.2 percent of branded/generic
11 drug users are females as opposed to males; is that
12 right?

13 A. That's correct.

14 Q. And those determinations as to that
15 demographic breakdown in part drives your notice
16 program and the media you select; is that right?

17 A. Repeat that one more time.

18 Q. The demographics here, male versus female,
19 not to the exclusion of all others, but the male
20 versus female breakdown here is important to you in
21 some way in selecting the media that is used for the
22 publication notice in this matter, right?

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 64

1 A. Actually, both of these targets skew
2 slightly female. Because we can measure how well
3 we're doing against these two targets, I don't
4 necessarily run a -- I don't do an MRI run against
5 women only or against men only. I use this for
6 direction.

7 And if you look on Page 14, the reason
8 I'm doing this is to look at how these two targets
9 might differ from each other so that I can make sure
10 that I'm choosing media that would effectively reach
11 both targets, and I cull out what I see as the
12 differences.

13 I'm not -- I don't sit there and say,
14 This skews mostly female; therefore, I'm only going
15 to use Better Homes & Gardens, and I'm not going to
16 use Parade magazine or I'm not going to use Sports
17 Illustrated.

18 Because the media that I have selected
19 or that we oftentimes find useful in these programs
20 are media with the largest circulations in
21 readership in the country, you're reaching a very
22 significant number of both men and women. Unless it

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 65

1 is a particular one that skews only to females,
2 sometimes we put a more -- one that skews a little
3 more female in our program.

4 In this particular instance we chose to
5 put Jet and Selecciones in there. We can't measure
6 Selecciones, but we put it in there because we
7 wanted to have some Hispanic coverage even though
8 those people who read Jet and Selecciones read the
9 other papers.

10 So it's not driven by this. These are
11 guidelines and a direction for us.

12 Q. But it does have some impact, as you
13 described?

14 A. We always measure. We always measure the
15 target; and, therefore, that's subsumed into that
16 measurement.

17 Q. Now, if you look on Page 18 to 20 of your
18 same template, I notice you selected, at least in
19 part, some magazines that do have heavy female
20 readership; Better Homes & Gardens, for instance.
21 Do you have information as to what the profile is of
22 users of Better Homes & Gardens?

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 66

1 A. Yes, but I don't have it with me.

2 Q. And People, I think you actually list on
3 Page 20, approximately 71 percent of People readers
4 are female.

5 A. Yes.

6 Q. And the 71 are age 18 to 49?

7 A. That's correct.

8 Q. Is that right?

9 The 18 to 49 aspect of that, that would
10 mean that the overwhelming majority of people -- of
11 persons who read People would not be part of a
12 Medicare target; is that right?

13 A. That's correct.

14 Q. Okay. Reader's Digest, 61 percent women
15 readers?

16 A. Correct.

17 Q. Now, we're going back to Page 14, I guess.
18 I'm sorry, 13, sorry. Your research indicates that
19 roughly 42 percent of Medicare recipients are male;
20 is that right?

21 A. Roughly, yes.

22 Q. And elsewhere in these papers you indicate

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 67

1 that your publication program will reach 83.1
2 percent of Medicare recipients prior to the
3 AstraZeneca trial beginning --

4 A. Correct.

5 Q. -- is that right?

6 A. 83.1 of Medicare.

7 Q. Do you know how many -- what percentage of
8 male Medicare recipients your notice program will
9 reach?

10 A. I don't, but I could calculate that.

11 Q. Would it be -- would it just be 42 times 83
12 percent. Is that how you get that number? 42
13 percent are male, it's a reach of 83, you multiply
14 those?

15 A. No. No, because you would look at the --
16 you would have to do a calculation based on each
17 publication. I mean, this -- as you went through
18 these publications, you could see that they were
19 selected or you could assume that it could be seen
20 that they were selected for different reasons to
21 balance the reach of the two targets. And in some
22 of these instances, like National Geo, it skews

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 68

1 male. Reader's Digest and People skew female. And
2 so against that target you are looking at it, but we
3 could do a run that would look at the gender.

4 Q. And you haven't done that?

5 A. No, because my target was Medicare
6 recipients.

7 Q. And the reason you selected, as you say, a
8 balance of some magazines that skew male, some that
9 skew women, is because you've decided that your
10 target audience includes all Medicare Part B
11 recipients and all branded/generic drug users,
12 right? You're covering a broad spectrum?

13 A. I would find the class members within those
14 two targets.

15 Q. And if you were doing a class target
16 specifically for Zoladex, you wouldn't approach it
17 that way, would you?

18 A. If it was Medicare Part B?

19 Q. If this was just a class action, my client
20 was the only defendant, it was one drug, you
21 wouldn't necessarily try to find balances of targets
22 that didn't meet the user profile of Zoladex, would

1 you?

2 A. Are you saying there is no Medicare Part B
3 at all identification with the hypothetical
4 situation?

5 Q. Well, tell it to me both ways. If there
6 were -- why don't we take that first. A solely
7 Medicare Part B case against my client, AstraZeneca,
8 with respect to Zoladex.

9 A. If I were doing no Medicare Part B, I would
10 look at the demographics and probably choose --
11 because I can't measure Zoladex, I would choose a
12 demographic that represented that.

13 In this case, based on what I have --
14 you know, the description of the drug and its usage,
15 I would likely have several targets.

16 Q. And that is because -- but you don't have
17 any basis for that because if, for example, the
18 overwhelming 90 percent of the users were a
19 particular gender, you wouldn't necessarily want to
20 deal with the gender that's not part of that target,
21 would you?

22 A. Well, I think if I picked only male-only

1 publications, I would open myself up to making a
2 decision that women should not receive notice, so I
3 would be looking at, you know, a broader group of
4 publications, and I would measure it.

5 Q. But you would want a balance.

6 A. But I --

7 Q. You would want to balance it as against the
8 actual user profile?

9 A. Yes, I would.

10 Q. And the reason that all of these magazines
11 that are listed in your first exhibit are in there
12 is because you're trying to reach not just Zoladex
13 users, you're trying to reach users of a number of
14 other products; is that right?

15 A. I'm reaching people whose demographics are
16 very similar because they're Medicare, and they're
17 certainly -- their ages -- for the most part, their
18 ages are going to be very similar. They're either
19 one of two genders, and we can see by these
20 demographics that there's a mix of male and female.
21 I could look very specifically at that, but I think
22 by the time I finished looking at it it would be

1 very close to what I developed here.

2 Q. But you don't have any basis for that, do
3 you?

4 A. No, but I could do that.

5 Q. I think you said before in your answer you
6 couldn't figure out what the Zoladex user profile
7 is. What's your basis for that statement?

8 A. That I couldn't figure out....?

9 Q. You couldn't figure out a specific user
10 profile for Zoladex. I think you may have mentioned
11 that in one of your answers. You don't have any
12 basis for that answer, do you?

13 MR. NOTARGIACOMO: Objection.

14 A. I think I should have my answer read back.

15 Q. I think it was in the context -- we can --
16 do you have any basis for concluding that you can't
17 determine a user profile for the specific drug
18 Zoladex?

19 MR. NOTARGIACOMO: Objection.

20 A. Would you repeat that one more time.

21 Q. Do you have any basis for concluding that it
22 is not possible to develop a specific user profile

1 for the drug Zoladex?

2 A. No, I do not.

3 Q. So let's go back, 42 percent are male of
4 your target audience. 57 percent are women. Your
5 program in your view will reach 83 percent of
6 Medicare recipients, so is it fair to say that it
7 will reach some lower portion of male Medicare
8 recipients?

9 A. It will reach -- it will reach 83 percent
10 of -- I can't say that. I'd have to look at that.

11 Q. But you haven't done that yet?

12 A. No, I haven't done that yet.

13 Q. Okay. Same question for the branded/generic
14 drug users. The breakout you have here is 59
15 percent are female and 40 percent are male. Can
16 you -- you estimate a reach of 81.6 percent to that
17 target audience in your papers.

18 A. That's correct.

19 Q. Can you tell me what the reach would be for
20 male generic/branded drug users?

21 A. Not from here. Not from here. But I could
22 tell that. I think when you -- particularly you're

1 reaching a level of 83 percent of a particular
2 target, that's a significant amount. It would be
3 very hard to reach 83 percent if all of a sudden
4 you're only reaching 20 percent of the men in that
5 target versus 90 percent of the women in that
6 target. Your results would be extremely different.

7 Q. But you haven't done that work to
8 determine -- you haven't made any representations to
9 the court as to the reach for male Medicare users or
10 the reach for male branded/generic users?

11 A. I have not, but I believe it would be
12 proportional to this.

13 Q. And by "proportional," you mean what?

14 A. I don't think we would be reaching more
15 women than is proportional to this target than we'd
16 be reaching men.

17 Q. But you haven't done the work to determine
18 that?

19 A. No.

20 Q. Okay.

21 MR. NOTARGIACOMO: When you get to a
22 good stopping point.

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 74

1 MR. FLYNN: Yes, sure, whenever you want
2 to take a break is fine. Do you want to take one
3 now?

4 MR. NOTARGIACOMO: Sure.

5 MR. FLYNN: How long do you want?

6 MR. NOTARGIACOMO: Ten minutes.

7 MR. FLYNN: Sure.

8 (Recess taken)

9 BY MR. FLYNN:

10 Q. Ms. Kinsella, we talked a little bit before
11 about the lack of TV and radio as part of your
12 notice here, and am I correct that the lack of that
13 is a reflection of your view that you do not need
14 that type of media to reach Medicare recipients in
15 this case?

16 A. It's my view that I was effectively reaching
17 them through the print program.

18 Q. Are you familiar with research that
19 concludes that Medicare recipients are
20 overwhelmingly female, low income with low education
21 levels?

22 A. I know that -- actually, no. I have some

1 moderate magazine readers, et cetera. This
2 information provided direction to the media
3 selections and ensured that the media used actually
4 reached the target audience." Do you see that?

5 A. I do.

6 Q. That's a correct statement of how you go
7 about determining what media to use, right?

8 A. It provides direction. It doesn't provide
9 your choices.

10 Q. And the last sentence says, "It is unlikely
11 that the target audience would see a summary notice,
12 for example, if placed in 200 newspapers nationwide
13 when the Settlement Group is composed of low-
14 education, low-income consumers who are not
15 newspaper readers," correct?

16 A. Where is that? I'm sorry?

17 Q. It's the last sentence of Page 4, carryover
18 to 5.

19 A. Yes. In newspapers, yes, that is correct.

20 Q. And magazines are different than newspapers?

21 A. And newspaper supplements are different than
22 newspapers.

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 78

1 Q. And so did you do research in this case, our
2 case, to determine whether or not the Medicare
3 population were heavy users of TV as opposed to
4 heavy users of other forms of media?

5 A. I think there are some quintile reports in
6 here, I believe.

7 Q. What did you conclude?

8 A. I'd have to go back and look at that again.

9 Q. If you would, please.

10 A. But let me just make a statement, if I could
11 here. And I don't want to interrupt your line of
12 questioning, but the -- there are a number of ways
13 you can reach people. You have people who are light
14 users of newspapers or heavy users of TV or vice
15 versa. The regions that I have against our target
16 audience are calculated specifically against a
17 demographic of Medicare people, and it is an
18 estimated 83.1 percent reach. Even if they are
19 heavy television viewers, I could not get to 83 if
20 they were only heavy television viewers. I have the
21 data and the survey material that supports those
22 runs and those reach figures.

1 Q. But in this Mylan case you concluded that
2 the Medicare population were heavy TV users, and you
3 tailored your program to use TV because of that; is
4 that right?

5 A. I tailored mine for several reasons. Number
6 one, this was a settlement notice. This was a
7 settlement notice in which the attorneys general
8 that I was working with, the antitrust divisions of
9 the states that were involved, wanted to ensure as
10 many claims as they possibly could get. That is not
11 what my focus is in here in the settlement.

12 My focus is to provide due process
13 notice of someone's rights in a litigation. Then
14 they will have an opportunity to take another action
15 in terms of filing a claim if, in fact, there's a
16 settlement or the court rules in favor of the
17 plaintiffs.

18 Q. So your testimony is that in the Mylan case,
19 you developed a publication notice program that went
20 above and beyond the call?

21 A. Yes. When you have reaches, as I'm looking
22 at here -- it has been a while since I've looked at

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 89

1 sense with you, if the plaintiffs' position is that
2 the notices they sent us earlier this week are the
3 operative notices, we'll look at those, as opposed
4 to the ones attached to Ms. Kinsella's declaration.
5 Is that fair?

6 MR. NOTARGIACOMO: I have no problem
7 with that. Just for the record, those were sent to
8 defendants to give them an opportunity -- to give
9 plaintiffs and defendants an opportunity to try to
10 come to -- as the court instructed us, to try to
11 come to some sort of common ground on the language
12 of those notices before we submit something to the
13 court.

14 MR. FLYNN: Right, and they were sent,
15 just for the record, I think Monday or Tuesday of
16 this week.

17 Q. And you have before you Exhibit Kinsella 003.
18 It's Exhibit Kinsella 002, I'm sorry. It's Exhibit
19 Kinsella 002.

20 I'd like to turn --

21 MR. TRETTER: Can we go off the record
22 for a second?

1 (Pause)

2 Q. One question before we -- one topic area
3 before we head to those particular notices. Are you
4 aware that members of Class 1 include not just
5 Medicare recipients with respect to the various
6 drugs listed, but also heirs and survivors of those
7 recipients?

8 A. I am now aware of that.

9 Q. And is it accurate to say that nothing in
10 your publication notice program was developed in any
11 way to target such heirs or executors of those
12 Medicare recipients?

13 A. That is correct. I developed these notices,
14 except for the minor changes that were just done,
15 without that knowledge.

16 Q. Okay. And I take it that consistent with
17 that, you did not undertake any research to try to
18 determine, with respect to Zoladex users, whether or
19 what proportion of class members fall into the
20 category of living persons as opposed to executors
21 and heirs?

22 A. I did not.

1 Q. Did you do any work to determine the
2 mortality rate of men with advanced prostate cancer
3 during the class period?

4 A. No, I did not.

5 Q. So you can't tell us anything about the
6 reach of your publication notice on members of Class
7 1 who happen to be heirs of Zoladex users or
8 executors of Zoladex users?

9 A. I didn't do any specific runs, but I can
10 tell you that the publications that were selected
11 here are the most broadly circulated publications in
12 the country and have the highest reach against
13 almost all targets, including adults 18-plus.

14 Q. But, again, no -- you're not giving any
15 opinions about the reach with respect to the portion
16 of Class 1 that are heirs? And, in fact, you didn't
17 even know when you undertook your program that a
18 portion of Class 1 could be heirs and executors,
19 right?

20 A. I know for a fact that the publications I've
21 selected, I've chosen to measure those against the
22 targets in this case that I chose, but I also know,